

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEA W. FASTOW,

Defendant.

Case No. H-03-CR-150

DECLARATION OF ANDREW S. FASTOW IN SUPPORT OF LEA FASTOW'S
MOTION TO SCHEDULE TRIAL TO OBTAIN EXCULPATORY TESTIMONY
FILED EX PARTE, UNDER SEAL

I, ANDREW S. FASTOW, declare under penalty of perjury, as follows:

1. I am making this declaration for the limited purpose of and only in connection with the particular proceeding of my wife's Motion to Schedule Trial to Obtain Exculpatory Testimony. I have been advised by my counsel that by making this declaration, I do not waive any rights, including my Fifth Amendment rights and my attorney-client privilege, and I reserve the right to assert those rights and any other rights at any other time as to the matters covered in this declaration.

2. I am the husband of Lea Fastow, the defendant in the above captioned matter. We have been a couple for over 22 years, and I have been married to her for 18 years. We have two children.

3. On October 31, 2002, the government obtained a 78-count indictment against me charging me in connection with various complex structured finance transactions at Enron Corp. in 1997 - 2001. On April 30, 2003, the government filed a 109 count superceding indictment

GOVERNMENT
EXHIBIT

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against me concerning these same matters. Both indictments charge that I played a central role in various allegedly fraudulent transactions including RADR and Chewco.

4. I am preparing for trial. Based on advice of counsel and the Fifth Amendment, I will decline to testify before my own trial. My case is set for a status conference before United States District Judge Kenneth Hoyt on July 28, 2003.

5. If Lea Fastow's trial were held after the completion of my trial, I would not invoke the Fifth Amendment, and I would testify at her trial, as set forth below.

6. I never, and to my knowledge and belief Michael Kopper never, agreed or conspired with Lea Fastow to commit the crimes alleged in Counts 1 and 2 of Lea's indictment.

7. The indictment against Lea alleges in Paragraph 11 that payments totaling \$67,224 received by our family from Michael Kopper were a "kickback" from Chewco which should have been reported on our tax returns. I would testify that Lea and I discussed our belief that these payments were paid to us voluntarily and out of friendship, and therefore were not taxable income.

8. The indictment against Lea Fastow alleges in Paragraph 13 that money our family received from Michael Kopper and Bill Dodson was in fact RADR income "disguised" as "either interest from an unspecified loan to Kopper or gifts," and was paid to "foster the illusion" that they were gifts which would not require reporting to the Internal Revenue Service. If called as a witness, I would testify that:

a. Lea and I discussed the fact that \$62,850 paid to us in August, 1997 was interest required to be paid to us under the terms of a loan agreement and as such was taxable income, and we therefore reported it on our tax returns;

b. Lea and I discussed the fact that other payments of money Lea and I and our sons Jeffrey and Matthew received from Michael Kopper and Bill Dodson were payments given to us voluntarily and out of friendship, and therefore were not taxable income.

c. As a general matter, Lea and I frequently discussed and agreed on our desire and duty to fully report all taxable income.

d. Based on my discussions with Lea, I am confident that she honestly believed that the payments we received from Kopper and Dodson were non-taxable, and that she therefore believed that our tax returns for 1997, 1998, 1999 and 2000 were in fact true and correct as to every material matter, contrary to the charges in Counts 3-6 of Lea's indictment.

9. I would also testify at Lea's trial that Michael Kopper told me that these various payments were gifts to us, and I related Kopper's statements to Lea. Both Lea and I understood that gifts were not taxable.

DATE: 5/20/03

Andrew S. Fastow
ANDREW S. FASTOW

Signed and sworn before me on May 20th 2003.

Rhonda J. Goodson
Notary Public in and for the State of Texas

